

IN THE
SUPREME COURT OF MISSOURI

COOPER COUNTY, MISSOURI,
A BODY POLITIC AND CORPORATE,
BY AND THROUGH ITS GOVERNING BODY,
THE COUNTY COMMISSION OF
COOPER COUNTY, MISSOURI,

RESPONDENT

VERSUS

SC 86086

CIRCUIT COURT OF THE 18TH
JUDICIAL CIRCUIT OF MISSOURI,
DONALD BARNES,
PRESIDING CIRCUIT JUDGE,

APPELLANT

APPEAL FROM THE
JUDICIAL FINANCE COMMISSION OF MISSOURI

RESPONDENT'S BRIEF



WILLIAM McCULLAH 26293
221 MAIN STREET • POST OFFICE BOX 370
FORSYTH, MISSOURI 65653
417 546-4300 • FAX 417 546-4378
BILL@MCCULLAH-LUNA.COM

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities..... 4

Jurisdictional Statement 6

Statement of Facts 6

Points Relied On 7

Argument 13

 I. The Judicial Finance Commission correctly determined that13

 the County is not obligated to pay additional funds for the

 deputy juvenile officer position because the County has

 already fulfilled its ‘maintenance of effort’ funding obligation

 under §211.393.6.

 II. The Judicial Finance Commission correctly determined that19

 the Circuit Court’s budget request was factually

 unreasonable. Even if the ‘reasonableness and ability to

 pay’ test under §50.640 supersedes the ‘maintenance of

 effort’ requirement of §211.393, the Circuit Court’s budget

 request is factually unreasonable in light of the totality of the

 County’s budget. Under this Court’s remand, the Judicial

 Finance Commission was mandated to determine the

 reasonableness of the specific elements of the Circuit

 Court’s budget requests, and its inquiry was not beyond the

scope of the pleadings.

- III. The Judicial Finance Commission correctly determined that22
the expense for the deputy juvenile officer position is not
necessary for the Circuit Court to carry out its essential
functions. The Judicial Finance Commission considered all
of the factors it is required to consider under the law, and
the basis for its conclusions is apparent in the record.
- IV. The Judicial Finance Commission correctly determined that26
the Circuit Court's budget request was factually
unreasonable. The Judicial Finance Commission
considered all of the factors required under law, and the
basis for its conclusions is apparent in the record.
- V. The Judicial Finance Commission correctly determined that28
the County is not obligated to pay additional funds for the
deputy juvenile officer position because the County has
already fulfilled its 'maintenance of effort' funding obligation
under §211.393.6. Neither the statute nor the Judicial
Finance Commission's decision violates the separation of
powers provisions of the Missouri Constitution.

VI.	The Judicial Finance Commission correctly determined32
	that the County's 'maintenance of effort' funding obligation	
	required by §211.393.6 is \$24,987.29. The Judicial	
	Finance Commission correctly excluded the grant amount	
	that paid the deputy juvenile officer's salary and the	
	amount paid for juvenile office attorney fees.	
VII.	The case should not be remanded for consideration by the34
	Judicial Finance Commission to be heard without	
	participation by Commissioner Gerald Jones.	
Conclusion		38
Certificate of Compliance and Service		39
Appendix (Table of Contents)		A-1

TABLE OF AUTHORITIES

Missouri Appellate Court Decisions

<i>Bosley v. Berra</i> , 688 S.W.2d 353 (Mo. banc 1985)	13, 20, 23, 27, 32
<i>Carter v. Reynolds County</i> , 288 S.W. 48 (Mo. 1926)	35
<i>Circuit Court of Jackson County v. Jackson County</i> , 776 S.W.2d 925 (Mo. App. W.D. 1989)	16, 31
<i>Cooper County v. Circuit Court of 18th Judicial Circuit</i> , 124 S.W.3d 466, 469 (Mo. banc 2004)	20, 22
<i>Missouri-Kansas Chemical Co. v. Christian County</i> , 180 S.W.2d 735, 736-737 (Mo. App. S.D. 1944).	35
<i>Smith v. Thirty-Seventh Judicial Circuit of Missouri</i> , 847 S.W.2d 755, 760 (Mo. banc 1993, Price, J., concurring).	29
<i>State ex rel. Clark v. Souders</i> , 69 Mo. App. 472 (E.D. 1897)	35
<i>State ex rel. Twenty-Second Judicial Circuit v. Jones</i> , 823 S.W.2d 471, 472-473 (Mo. banc 1992)	24, 27
<i>State ex rel. Walton v. Miller</i> , 297 S.W.2d 611 (Mo. App. W.D. 1956).	35, 36

Missouri Constitution, Statutes, and Court Rules

Article II §1, Missouri Constitution	29
Article V §13, Missouri Constitution	30
Article V §15, Missouri Constitution	30
Article V §16, Missouri Constitution	30
Article VI § 7, Missouri Constitution	35
§49.070	35
§50.640	14, 15, 16, 17, 20, 24, 26, 27, 30
§211.393	14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 30, 31, 32, 33
§476.270	30
§477.005	30
§477.600	13, 19, 22, 24, 26, 27, 28, 29, 32
§483.245.6	30
Supreme Court Operating Rule 12 (<i>Rules of Practice and Procedure</i>	38
<i>Before the Missouri Judicial Finance Commission</i>), Rule 12-	
9.03	
Supreme Court Operating Rule 12 (<i>Rules of Practice and Procedure</i>	38
<i>Before the Missouri Judicial Finance Commission</i>), Form 2510	

JURISDICTIONAL STATEMENT

Respondent adopts Appellant's jurisdictional statement.

STATEMENT OF FACTS

The Judicial Finance Commission found that the County's 'maintenance of effort' funding obligation under §211.393 is \$24,987.29; that the juvenile budget approved by the County for 2004 was \$37,330.26; and that the County had already "volunteered" to exceed its 'maintenance of effort' funding obligation by \$12,342.97 even without the inclusion of the budget request for the deputy juvenile officer position.

On August 4 2004 Steven Fritz, Esquire stipulated that, after the time he began representing Appellant in this cause, he has continued to represent clients before the Honorable Donald Barnes.

POINTS RELIED ON

I.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY IS NOT OBLIGATED TO PAY ADDITIONAL FUNDS FOR THE DEPUTY JUVENILE OFFICER POSITION BECAUSE THE COUNTY HAS ALREADY FULFILLED ITS 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION UNDER §211.393.6.

§50.640

§211.393

II.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE CIRCUIT COURT'S BUDGET REQUEST WAS FACTUALLY UNREASONABLE. EVEN IF THE 'REASONABLENESS AND ABILITY TO PAY' TEST UNDER §50.640 SUPERSEDES THE 'MAINTENANCE OF EFFORT' REQUIREMENT OF §211.393, THE CIRCUIT COURT'S BUDGET REQUEST IS FACTUALLY UNREASONABLE IN LIGHT OF THE TOTALITY OF THE COUNTY'S BUDGET. UNDER THIS COURT'S REMAND, THE JUDICIAL FINANCE COMMISSION WAS MANDATED TO DETERMINE THE REASONABLENESS OF THE SPECIFIC ELEMENTS OF THE CIRCUIT COURT'S BUDGET REQUESTS, AND ITS INQUIRY WAS NOT BEYOND THE SCOPE OF THE PLEADINGS.

§50.640

§211.393

III.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE EXPENSE FOR THE DEPUTY JUVENILE OFFICER POSITION IS NOT NECESSARY FOR THE CIRCUIT COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS. THE JUDICIAL FINANCE COMMISSION CONSIDERED ALL OF THE FACTORS IT IS REQUIRED TO CONSIDER UNDER THE LAW, AND THE BASIS FOR ITS CONCLUSION IS APPARENT IN THE RECORD.

§50.640.2

§211.393

§477.600.5(2)

IV.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE CIRCUIT COURT'S BUDGET REQUEST WAS FACTUALLY UNREASONABLE. THE JUDICIAL FINANCE COMMISSION CONSIDERED ALL OF THE FACTORS REQUIRED UNDER LAW, AND THE BASIS FOR ITS CONCLUSION IS APPARENT IN THE RECORD.

§50.640.2

§211.393

§477.600.5(2)

V.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY IS NOT OBLIGATED TO PAY ADDITIONAL FUNDS FOR THE DEPUTY JUVENILE OFFICER POSITION BECAUSE THE COUNTY HAS ALREADY FULFILLED ITS 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION UNDER §211.393.6. NEITHER THE STATUTE NOR THE JUDICIAL FINANCE COMMISSION'S DECISION VIOLATES THE SEPARATION OF POWERS PROVISIONS OF THE MISSOURI CONSTITUTION.

Smith v. Thirty-Seventh Judicial Circuit of Missouri, 847 S.W.2d 755, 760 (Mo. banc 1993, Price, J., concurring)

Article II §1, Missouri Constitution

Article V §13, Missouri Constitution

Article V §15, Missouri Constitution

Article V §16, Missouri Constitution

§50.640

§211.393

§477.005

§483.245.6

VI.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY'S 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION REQUIRED BY §211.393.6 is \$24,987.29. THE JUDICIAL FINANCE COMMISSION CORRECTLY EXCLUDED THE GRANT AMOUNT THAT PAID THE DEPUTY JUVENILE OFFICER'S SALARY AND THE AMOUNT PAID FOR JUVENILE OFFICE ATTORNEY FEES.

VII.

THE CASE SHOULD NOT BE REMANDED FOR CONSIDERATION BY THE JUDICIAL FINANCE COMMISSION TO BE HEARD WITHOUT PARTICIPATION BY COMMISSIONER GERALD JONES.

State ex rel. Walton v. Miller, 297 S.W.2d 611 (Mo. App. W.D. 1956)

Missouri-Kansas Chemical Co. v. Christian County, 180 S.W.2d 735, 736-737
(Mo. App. S.D. 1944)

Carter v. Reynolds County, 288 S.W. 48 (Mo. 1926)

State ex rel. Clark v. Souders, 69 Mo. App. 472 (E.D. 1897)

Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Rule 12-9.03 (*Filing Petition for Review*)

Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Form 2510

Article VI §7, Missouri Constitution

ARGUMENT

I.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY IS NOT OBLIGATED TO PAY ADDITIONAL FUNDS FOR THE DEPUTY JUVENILE OFFICER POSITION BECAUSE THE COUNTY HAS ALREADY FULFILLED ITS 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION UNDER §211.393.6.

Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985)

§50.640

§211.393

Pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985).

The Judicial Finance Commission determined that, after the amendment to §211.393 in 1998, the County is not required to fund the deputy juvenile officer position.

The issue here is not precisely as Appellant has phrased it, *to-wit*, whether §211.393 prohibits the County from paying the salary of juvenile court personnel as a matter of law. Rather, the issue is whether, after the 1998 amendment of §211.393, the Circuit Court can require the County to fund the deputy juvenile officer position when the County has already fulfilled its ‘maintenance of effort’ funding obligation under §211.393.6.

The Judicial Finance Commission said in its opinion

[The] rules of statutory construction presume that the legislature intended to pass a law that would have meaning, and disfavor any construction that presumes the legislature passed a law with no meaning. We choose to believe that section 211.393, RSMo, was passed with the intent that it have meaning, and that the meaning of that section was to mandate the maintenance of a specific amount for juvenile services, and no more than that specific amount. To force counties to go beyond the amount calculated pursuant to section 211.393, RSMo, would effectively strip maintenance of effort of all purpose and make reasonableness under 50.640, RSMo, the only meaningful test for county juvenile expenditures.

§211.393.6 provides for a mandatory minimum level of funding beyond which the County is not required to appropriate. §211.393.6 creates an exception to the general 'reasonableness and ability to pay' standard of §50.640 and has relieved the County of the obligation to fund the deputy juvenile officer position. The specific provision of §211.393.6 must prevail over the general 'reasonableness and ability to pay' standard of §50.640.

Before the amendment of §211.393 in 1998, a circuit court determined the number of deputy juvenile officers necessary and determined their salaries, subject to the 'reasonableness and ability to pay' standard of §50.640. The counties paid the balance of the compensation not reimbursed by the state.

With the amendment of §211.393 in 1998, the State of Missouri assumed responsibility for determining the number of deputy juvenile officers necessary and became responsible for their salaries and fringe benefits. The amendment relieves the County from the obligation to pay deputy juvenile officer salaries but requires the County to maintain a mandatory minimum level of funding for juvenile expenses. The formula for calculating this mandatory minimum level of funding, set out in §211.393.6, is commonly known as the 'maintenance of effort' funding formula.

If §211.393.6 had been written to provide that the County could not provide more than 'maintenance of effort' funding, the effect would be to constitute a

statutory cap. Obviously, the general assembly did not want to preclude the County from voluntarily providing excess funds.

In fact, the County did exceed its 'maintenance of effort' obligation by \$12,342.97 in the 2004 budget. (L.F. 219)

However, the effect of the statute is that, once the County has appropriated the amount of 'maintenance of effort' funding, it cannot be required to appropriate more funds for juvenile court operations.

The Judicial Finance Commission clearly expressed this interpretation of §211.393.6, that the general 'reasonableness and ability to pay' concept of §50.640.2 is preempted by the 1998 amendment of §211.393.

Under Missouri's old statutory scheme, authority to hire and fix compensation for juvenile court employees was vested in the circuit courts, subject only to change by the Judicial Finance Commission. The amendment of §211.393 in 1998 changes the rule expressed in *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925 (Mo. App. W.D. 1989). The Missouri general assembly now has the same *de facto* power to control the number of deputy juvenile officers in Cooper County that it has to indirectly determine the number of court clerks in the state and to affect the function of the state's judicial department by controlling the judicial budget.

It is true that §211.393.6 encourages the County's funding of juvenile court functions that are essential for the best interests of juveniles and prevents the

County from redirecting savings from juvenile court personnel expenses to something other than juvenile court operations. The statute also creates a limitation on the (former) right of a circuit court to make the determination that its juvenile court functions be funded at a level deemed by it to be necessary to carry out its essential functions. §211.393.6 creates a limitation on juvenile court expenditures that can be exceeded only at the option of the County.

§211.393 change the long-established procedure for determining reasonableness of circuit court expenses. §211.393 obviates the Judicial Finance Commission's 'reasonableness and ability to pay' function under §50.640 as long as the County has met the 'maintenance of effort' funding requirement under §211.393.6. So long as the County has met the funding requirement, it may refuse to pay for juvenile court personnel that might, before the 1998 amendment, have been deemed essential to a circuit court's juvenile court function.

To allow §211.393.6 to be circumvented by the general 'reasonableness and ability to pay' standard of §50.640 will render §211.393.6 ineffective.

The Judicial Finance Commission concluded that any request beyond 'maintenance of effort' funding is unreasonable.

This interpretation of §211.393 is in harmony with §50.640. The general assembly changed the effect of §50.640 by creating an exception regarding juvenile court operations. §211.393 must be read to limit the County's obligation

to fund juvenile court personal services related expenditures so long as the County has satisfied its mandatory minimum funding requirement of §211.393.6.

By enacting §211.393.6, the legislature did intend to limit the authority of the Judicial Finance Commission to determine reasonableness and revoked its role in determining the reasonableness of the budget request for the deputy juvenile officer position, regardless of whether under the old rule the position might have been found reasonable or necessary.

A review of the evidence compels this Court to determine that the Judicial Finance Commission's interpretation of §211.393.6 must be affirmed.

II.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE CIRCUIT COURT'S BUDGET REQUEST WAS FACTUALLY UNREASONABLE. EVEN IF THE 'REASONABLENESS AND ABILITY TO PAY' TEST UNDER §50.640 SUPERSEDES THE 'MAINTENANCE OF EFFORT' FUNDING REQUIREMENT OF \$211.393, THE CIRCUIT COURT'S BUDGET REQUEST IS FACTUALLY UNREASONABLE IN LIGHT OF THE TOTALITY OF THE COUNTY'S BUDGET. UNDER THIS COURT'S REMAND, THE JUDICIAL FINANCE COMMISSION WAS MANDATED TO DETERMINE THE REASONABLENESS OF THE SPECIFIC ELEMENTS OF THE CIRCUIT COURT'S BUDGET REQUESTS, AND ITS INQUIRY WAS NOT BEYOND THE SCOPE OF THE PLEADINGS.

Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985)

§50.640

§211.393

The applicable standard of review is that, pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985).

This Court directed the Judicial Financial Commission on remand to consider the reasonableness of the specific elements of the Circuit Court's budget request. *Cooper County v. Circuit Court of 18th Judicial Circuit*, 124 S.W.3d 466, 469 (Mo. *banc* 2004). The Judicial Finance Commission consolidated the 2003 and 2004 budget cases and on March 22 2004 held a hearing in both actions.

At the hearing, the County's Presiding Commissioner and the Clerk of the County Commission testified concerning the County's financial circumstances, and to the rapid depletion of the County's reserve funds. Budget documents in evidence demonstrated that other County departments have not been adding staff. The County did not dispute that the deputy juvenile officer position provides services that were of value to the County. However, the County's evidence demonstrated that there were other services that might also be of value that cannot be funded in light of the County's current fiscal situation. (L.F. 220-221).

The Judicial Finance Commission's decision was that, even if the 'reasonableness and ability to pay' test under §50.640 supersedes the 'maintenance of effort' funding requirement of §211.393, the Circuit Court's budget request is factually unreasonable in light of the totality of the County's budget. (L.F. 220). The Judicial Finance Commission found that the County's rapid depletion of its reserve funds make it unreasonable for it to assume

additional costs for positions that it did not contemplate funding out of its own pocket, that other County departments have not been adding staff, and that it is unreasonable to mandate the County to add personnel expenditures in one area of the budget while other areas are not allowed to add personnel.

This Court's mandate required the Judicial Finance Commission to determine the issue of factual reasonableness. Thus, despite the Circuit Court's objections raised in Appellant's Brief, the Judicial Finance Commission's inquiry was not beyond the scope of the pleadings, nor outside the County's "contentions made", nor was it necessary that the issues be 'framed' by presence or absence of either party's consent.

Viewed in the totality of Petitioner's budget, the Judicial Finance Commission correctly found it unreasonable that the County be required to fund the deputy juvenile officer position. (L.F. 220-221).

III.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE EXPENSE FOR THE DEPUTY JUVENILE OFFICER POSITION IS NOT NECESSARY FOR THE CIRCUIT COURT TO CARRY OUT ITS ESSENTIAL FUNCTIONS. THE JUDICIAL FINANCE COMMISSION CONSIDERED ALL OF THE FACTORS IT IS REQUIRED TO CONSIDER UNDER THE LAW, AND THE BASIS FOR ITS CONCLUSION IS APPARENT IN THE RECORD.

Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985)

§50.640.2

§211.393

§477.600.5(2)

The applicable standard of review is that, pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985).

This Court directed the Judicial Financial Commission on remand to consider the reasonableness of the specific elements of the Circuit Court's budget request. *Cooper County v. Circuit Court of 18th Judicial Circuit*, 124 S.W.3d 466, 469 (Mo. banc 2004). The Judicial Finance Commission

consolidated the 2003 and 2004 budget cases and on March 22 2004 held a hearing in both actions.

The County's Presiding Commissioner and Clerk of the County Commission testified concerning the County's financial circumstances, to the rapid depletion of its reserve funds that makes it unreasonable for it to assume additional costs for positions that it did not contemplate funding out of its own pocket, and that the budget documents reveal that other County departments have not been adding staff. The County did not dispute that the deputy juvenile officer position provides services that were of value to the County, but the County's evidence established that there were other valuable services that cannot be funded in light of the County's current fiscal crisis. (L.F. 220-221).

The Judicial Finance Commission found the Circuit Court's budget request to be factually unreasonable. Its opinion demonstrates that the Judicial Finance Commission found it significant that the County's reserves are being rapidly depleted, that the County is suffering from a financial crisis, and that other County departments have not been adding staff and that it would be unreasonable to mandate adding personnel in one area of the budget while other areas are not allowed to add personnel. The Judicial Finance Commission also found that Cooper County did not contemplate funding the deputy juvenile officer position out of its own pocket. (L.F. 220-221).

The Judicial Finance Commission had jurisdiction to determine that the deputy juvenile officer position budget request was not necessary for the Circuit Court to carry out its essential functions. The record contains sufficient evidence to support the finding that the County suffered from a rapid depletion of its reserve funds, that it was in a financial crisis, that other County departments were unable to add staff, and that the County did not contemplate funding the deputy juvenile officer position from the County's resources. (L.F. 221-221)

§477.600.5(2) requires the Judicial Finance Commission to clearly state the reasons for its decision. The Judicial Finance Commission clearly stated its conclusions regarding the degree of necessity concerning the budget item in question. The Judicial Finance Commission adequately addressed the 'discrete and concrete' elements of this budget request in the manner contemplated by *Bosley v. Berra*, 688 S.W.2d 354, 355 (Mo. *banc* 1985), and clearly stated its findings on the issue.

When the legislature created the Judicial Finance Commission in 1982, it set forth specific factors the Judicial Finance Commission is to consider in determining 'reasonableness and ability to pay'. §50.640.2. Before the 1998 amendment to §211.393, this issue would have been governed by the general 'reasonableness and ability to pay' standards of §50.640.2.

Concerning juvenile office personal services related budget requests, the Judicial Finance Commission may no longer use the factors set forth in §50.640

to balance the level of necessity for the budget request with the financial circumstances of the county. The historic test for reasonableness described in *State ex rel. Twenty-Second Judicial Circuit v. Jones* must yield to the 1998 amendment of 211.393.

In making its decision, the Judicial Finance Commission correctly focused on the financial circumstances of the County and adequately considered the level of need that exists in the County for the deputy juvenile officer position.

IV.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE CIRCUIT COURT'S BUDGET REQUEST WAS FACTUALLY UNREASONABLE. THE JUDICIAL FINANCE COMMISSION CONSIDERED ALL OF THE FACTORS REQUIRED UNDER LAW, AND THE BASIS FOR ITS CONCLUSION IS APPARENT IN THE RECORD.

Bosley v. Berra, 688 S.W.2d 353 (Mo. banc 1985)

§50.640.2

§211.393

§477.600.5(2)

The applicable standard of review is that, pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. banc 1985).

In 1982, when it passed a statute creating the Judicial Finance Commission, the legislature set out specific factors the Commission must consider in determining the issue of reasonableness. §50.640.2. Before the 1998 amendment of §211.393 in 1998, that issue would have been governed by the 'general reasonableness and ability to pay' standard of §50.640.2.

Since the 1998 amendment, concerning juvenile court personal services related expenditures, the Judicial Finance Commission can no longer exclusively use the factors set forth in §50.640.2 to balance the level of necessity for the budget item request with the financial circumstances of the county. The historic test for reasonableness described in *State ex rel. Twenty-Second Judicial Circuit v. Jones*, 823 S.W.2d 471, 472-473 (Mo. banc 1992) must give way to the new standard expressed in §211.393.

§477.600.5(2) requires the Judicial Finance Commission to clearly state the reasons for its decision. The Judicial Finance Commission clearly stated its conclusions regarding the degree of necessity of the budget item in question, adequately addressed the ‘discrete and concrete’ elements of this budget request in the manner contemplated by *Bosley v. Berra*, 688 S.W.2d 354, 355 (Mo. banc 1985), and clearly stated its findings on the issue.

In making its decision, the Judicial Finance Commission correctly focused on the financial circumstances of the County and adequately considered the level of need that exists in the County for the deputy juvenile officer position.

V.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY IS NOT OBLIGATED TO PAY ADDITIONAL FUNDS FOR THE DEPUTY JUVENILE OFFICER POSITION BECAUSE THE COUNTY HAS ALREADY FULFILLED ITS 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION UNDER §211.393.6. NEITHER THE STATUTE NOR THE JUDICIAL FINANCE COMMISSION'S DECISION VIOLATES THE SEPARATION OF POWERS PROVISIONS OF THE MISSOURI CONSTITUTION.

Smith v. Thirty-Seventh Judicial Circuit of Missouri, 847 S.W.2d 755, 760 (Mo.

banc 1993, Price, J., concurring)

Article II §1, Missouri Constitution

Article V §13, Missouri Constitution

Article V §15, Missouri Constitution

Article V §16, Missouri Constitution

§50.640

§211.393

§476.270

§477.005

§483.245.6

The applicable standard of review is that, pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. *banc* 1985).

Circuit courts occupy a unique position in Missouri's scheme of government. A circuit court's inherent authority to select, appoint, and control its own staff is derived from Article II §1, the constitutional separation of the powers of government into three distinct departments. *Smith v. Thirty-Seventh Judicial Circuit of Missouri*, 847 S.W.2d 755, 760 (Mo. *banc* 1993, Price, J., concurring).

A circuit court's inherent authority notwithstanding, the legislative branch directly and indirectly affects operations of the State's judicial branch. Under Missouri's constitutional separation of the powers of government, appropriations are the exclusive domain of the legislature; the general assembly controls the budgets of the executive and the judiciary, as well as its own. While the legislature cannot encroach on the powers of the judicial branch and abrogate a circuit court's right to appoint a necessary staff, the judicial branch must operate within the level of funding provided by the general assembly.

It is noteworthy that, under the constitutional separation of powers of government, the legislature directly affects judicial operations by determining the number of court of appeals judges in the State under Article V §13, and the

number of circuit and associate circuit judges in the state under Article V §§15 and 16.

Even the ability of this Court to appoint its officers and employees must be exercised within the limits of the amount appropriated by the general assembly for such purpose. §477.005. Similarly, operations of circuit clerks' offices are indirectly regulated by the legislature's salary appropriations. §483.245.6.

The legislature originally provided that the expense of operating circuit courts would be borne by the counties. §476.270. In furtherance of that concept, the legislature conferred extensive power upon circuit courts when it created the budget scheme set out in §50.640, section 1. In 1982, the legislature limited circuit courts' authority by amending §50.640 to add section 2, which introduced the test of 'reasonableness and ability to pay', and concurrently created the Judicial Finance Commission to administer that test.

It is clearly within the legislature's purview to alter, or even abolish, any of these judicial budget provisions. The legislature's 1998 amendment of §211.393 is hardly a violation of the concept of separation of powers of government.

The Judicial Finance Commission interprets §211.393 as relieving the County from its obligation to provide additional personnel to a juvenile court because the County has already paid the minimum amount required by the 'maintenance of effort' funding formula. (L.F. 212-221). Appellant argues that this interpretation of the statute usurps the inherent power of a circuit court to

control its own employees. The amendment of §211.393 in 1998 changed a circuit court's authority as discussed in *Circuit Court of Jackson County v. Jackson County*, 776 S.W.2d 925 (Mo. App. W.D. 1989). The Missouri general assembly has now transferred to the executive branch the power to determine the number of deputy juvenile officers throughout the State. Whether to assume, add, or fund a deputy juvenile officer position is now within the exclusive purview of the executive branch, subject to the legislature's appropriations.

It is true that §211.393.6 encourages the County's funding of juvenile court functions that are essential for the best interests of juveniles and prevents the County from redirecting savings from juvenile court personnel expenses to something other than juvenile court operations.

It is equally true that §211.393.6 creates a limitation on the (former) right of the Circuit Court to determine that its juvenile court be funded at a level deemed by it to be necessary to carry out its essential functions. §211.393.6 creates a juvenile court funding limitation that can be exceeded only at the option of the county.

VI.

THE JUDICIAL FINANCE COMMISSION CORRECTLY DETERMINED THAT THE COUNTY'S 'MAINTENANCE OF EFFORT' FUNDING OBLIGATION REQUIRED BY §211.393.6 is \$24,987.29. THE JUDICIAL FINANCE COMMISSION CORRECTLY EXCLUDED THE GRANT AMOUNT THAT PAID THE DEPUTY JUVENILE OFFICER'S SALARY AND THE AMOUNT PAID FOR JUVENILE OFFICE ATTORNEY FEES.

The applicable standard of review is that, pursuant to §477.600.7, this Court reviews the decision of the Judicial Finance Commission *de novo*, but accords its conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions. *Bosley v. Berra*, 688 S.W.2d 353 (Mo. *banc* 1985).

The Judicial Finance Commission correctly determined that the County's 'maintenance of effort' calculation is \$24,987.29. (L.F. 51, 218, 222). This amount did not include the State of Missouri grant funds that paid for the deputy juvenile officer position in calendar year 1997 (Tr. 13). The Judicial Finance Commission's calculation correctly excluded \$32,500.00 that funded the deputy juvenile officer position because the money for the deputy juvenile officer position came from a state grant. (Tr. 13). These were not County funds appropriated

for juvenile office personnel. State grant funds were merely funneled through the County's budget because the County acted as the Circuit Court's paymaster.

The Judicial Finance Commission also correctly excluded the amount budgeted by the County for the juvenile office's attorney's fees. (Tr. 13) The County did not appropriate these funds for juvenile court personnel.

.

VII.

THE CASE SHOULD NOT BE REMANDED FOR CONSIDERATION BY THE JUDICIAL FINANCE COMMISSION TO BE HEARD WITHOUT PARTICIPATION BY COMMISSIONER GERALD JONES.

State ex rel. Walton v. Miller, 297 S.W.2d 611 (Mo. App. W.D. 1956)

Missouri-Kansas Chemical Co. v. Christian County, 180 S.W.2d 735, 736-737
(Mo. App. S.D. 1944)

Carter v. Reynolds County, 288 S.W. 48 (Mo. 1926)

State ex rel. Clark v. Souders, 69 Mo. App. 472 (E.D. 1897)

Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Rule 12-9.03 (*Filing Petition for Review*)

Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Form 2510

Article VI §7, Missouri Constitution

This point is not subject to a standard of review, because the Circuit Court first raised this issue after the decision of the Judicial Finance Commission.

Article VI §7 of the Missouri Constitution requires the election of a county commission in non-charter counties and provides that the commission "shall manage all county business as prescribed by law".

A county commission performs its functions as a constituted body. *State ex rel. Walton v. Miller*, 297 S.W.2d 611 (Mo. App. W.D. 1956). A county commission may speak only through its records, and *ex officio*, verbal understandings with county judges are not valid and binding. *Missouri-Kansas Chemical Co. v. Christian County*, 180 S.W.2d 735, 736-737 (Mo. App. S.D. 1944).

Carter v. Reynolds County, 288 S.W. 48 (Mo. 1926), held that a county court's three members acting individually have no power to obligate the county. In that opinion, this Court said

If all three of the judges of the county court had separately agreed with plaintiff that the county would pay him \$500 for driving piling in Black river, the county would not be bound. They could act for and obligate the county only when sitting as the county court.

§49.070 provides that a majority of the commissioners of the county commission is required to constitute a quorum to do business, and *State ex rel. Clark v. Souders*, 69 Mo. App. 472 (E.D. 1897) held that a majority of the three county court judges must concur in the transaction of any official business.

State ex rel. Walton v. Miller, 297 S.W.2d 611, 614 (Mo. App. W.D. 1956)

said

A majority of the county judges constitutes a quorum, if it is made at the proper time and place to transact the business. When the two judges, Taylor and Salmons, while conversing in the corridors of the courthouse and without the presence, knowledge or consent of Miller, the presiding judge, and who, seemingly, was standing within easy call, undertook to make an oral agreement with Walton to do work for the county, they were acting in their individual capacity and they were not, under such circumstances, the authorized agents of the county respecting the transaction. [Citations omitted].

Respondent's counsel, McCullah, also represents the County Commission of Cape Girardeau County in an action pending in the Circuit Court of Cape Girardeau, County, cause number 04-CG-CV00531, styled *State ex rel. City of Jackson, Relator v. Bill J. Reynolds, Treasurer of Cape Girardeau County, Missouri, and Gerald Jones, Larry Bock, Joseph Gambill, Cape County Girardeau County Commissioners, Respondents*.

Although the relator in the Cape County lawsuit chose to name the individual commissioners as respondents in the original pleading, Missouri law does not require that individual commissioners must be parties to lawsuits brought by or against county commissions.

Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Rule 12-9.03 (*Filing Petition for Review*) provides that the county governing body shall file the petition with the commission. (Emphasis supplied)

Commissioner Jones is not McCullah's client. McCullah does not represent Commissioner Jones in any individual capacity; McCullah does not represent Commissioner Jones at all. McCullah's client is the County's constitutional and statutory governing body, the County Commission of Cape Girardeau County.

It is true that Commissioner Jones' name is listed in the caption of the pleading filed with the Judicial Finance Commission, but that is because Supreme Court Operating Rule 12 (*Rules of Practice and Procedure Before the Missouri Judicial Finance Commission*), Form 2510 requires the name of the county governing body and the names of its members, as well as the name of the circuit court and the names of its judges.

Although the Rule and the Form also requires Judge Barnes' name to be listed in the caption, Judge Barnes is not a party in interest. The 18th Judicial Circuit is the party in interest.

On August 4 2004 Steven Fritz, Appellant's counsel stipulated that, after the time he began representing Appellant in this cause, he has continued to represent clients before the Honorable Donald Barnes.

It is not improper for Mr. Fritz to represent clients before Judge Barnes while at the same time representing the Circuit Court in this action. The same analogy should be drawn concerning McCullah's representation of the County Commission of Cape Girardeau County. From this analogy, this Court should conclude that Commissioner Jones has no conflict of interest and has not committed the appearance of impropriety.

There is no reason that Commissioner Jones should have recused, and there is no reason for this cause to be remanded to the Judicial Finance Commission for consideration without participation by Commissioner Jones.

CONCLUSION

The County prays that this Court accord the Judicial Finance Commission's conclusions regarding reasonableness of circuit court expenditures that degree of deference due in view of its legislative genesis and statutory functions, and reach the same decision, in all respects, as the Judicial Finance Commission. The County requests that the decision of the Judicial Finance Commission be affirmed.

McCullah
& Luna

BY _____

WILLIAM McCULLAH 26293
221 MAIN STREET • POST OFFICE BOX 370
FORSYTH, MISSOURI 65653
417 546-4300 • FAX 417 546-4378
BILL@MCCULLAH-LUNA.COM

CERTIFICATE OF COMPLIANCE AND SERVICE

Comes now William McCullah and certifies as follows:

1. This brief complies with the requirements of Rule 55.03 and the limitations contained in Rules 84.06(c) and 84.06(g), Missouri Rules of Civil Procedure.
2. The number of words contained in this brief is 6,009.
3. This brief was prepared with and formatted in Microsoft Word 2000 (9.0.2720).
4. A floppy disk containing this brief is filed contemporaneously herewith..
5. Said disks are double-sided, high-density, IBM-PC compatible, and have been scanned for viruses using Norton AntiVirus version 9.05.15 with virus definitions released on December 14 2004.
6. Two complete copies of *Respondent's Brief*, together with a floppy disk containing said brief, were deposited on December 14 2004 with the United States Postal Service, postage prepaid, properly addressed to Steven Fritz, Esquire, 202 West Fourth Street, Sedalia, Missouri 65201.

McCullah
& Luna

BY _____

WILLIAM McCULLAH 26293
221 MAIN STREET • POST OFFICE BOX 370
FORSYTH, MISSOURI 65653
417 546-4300 • FAX 417 546-4378
BILL@MCCULLAH-LUNA.COM